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ORIGINAL**EXCEPTION****BEFORE THE ARIZONA CORPORATION COMMISSION**

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IN THE MATTER OF MOHAVE ELECTRIC
COOPERATIVE, INC. APPLICATION FOR
APPROVAL OF RENEWABLE ENERGY
STANDARD PLAN AND TARIFFS

DOCKET NO. E-01750A-09-0336

**Mohave Electric Cooperative, Inc.'s
Exceptions to Recommended Opinion
and Order; Request for Waiver of
AAC R14-2-1802(B)**

Mohave Electric Cooperative, Inc. ("Mohave"), by and through its undersigned counsel, supports the Commission Staff's Report and Recommended Opinion and Order ("ROO") except for two aspects: 1) the determination that Mohave's 5 MW Solar system not count toward meeting the Distributed Renewable Energy Resources requirement and 2) the order requiring Mohave to re-bill its irrigation customers for six months of under-billing.¹ Therefore, Mohave files this exception to the ROO pursuant to AAC R14-3-110(B).

Alternatively, to the extent the Commission concludes the 5 MW Solar facility does not currently meet the definition of a Distributed Renewable Energy Resource, Mohave respectfully requests a waiver of the definition of Distributed Renewable Energy Resources contained in R14-2-1802(B) and authorization to count the 5 MW Solar facility toward meeting the Distributed Renewable Energy Resources requirement under AAC R14-2-1805.

¹ Mohave also notes that Table 1 inadvertently includes the year 2011 twice and that the headings should start with 2010 and end with 2014. The underlying data is accurate, if the headings are corrected.

1 Such a waiver for cooperatives is expressly anticipated by AAC R14-2-1814, which provides:
2 "Upon Commission approval of this plan, its provisions shall substitute for the requirements
3 of R14-2-1804 and R14-2-1805 for the electric power cooperative proposing the plan."

4 This Exception and Request for Waiver is supported by the Memorandum of
5 Points and Authorities that follows.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. THE SOLAR FACILITY MEETS THE RULE'S DEFINITION**
8 **OF "DISTRIBUTED RENEWABLE RESOURCES"**

9 Mohave is committed to meeting the Commission's renewable energy goals as
10 evidenced by its RES Plan and Tariffs for 2010. An important component of that plan is the
11 acquisition of ownership rights to the output of 5 MW of solar generation to be installed
12 within Mohave's Bullhead City/Kingman load pocket. The Solar facility will be developed
13 by a customer/member on the customer's premises. The power produced by the Solar facility
14 will be providing wholesale capacity and energy to Mohave (the local Utility Distribution
15 Company) for use by multiple customers in contiguous distribution station service areas
16 through direct interconnection into Mohave's distribution system. No new transmission will
17 be required and no aspect of the project will require a Certificate of Environmental
18 Compatibility from the Commission. The Solar facility would not be developed unless
19 Mohave was willing and able to purchase ownership rights to 5 MW of the facility's
20 generation. Mohave will acquire its ownership rights through a lease/purchase arrangement.

21 Mohave submits that the Solar facility satisfies the Commission's definition of
22 "Distributed Renewable Energy Resources" set forth in AAC R14-2-1802(B) (the "Rule"):

23 "applications of the following defined technologies that are
24 located at a customer's premises and that displace
25 Conventional Energy Resources that would otherwise be used
to provide electricity to Arizona customers."

1 There is no dispute that the Solar facility is one of the “technologies” listed in
2 the Rule. In particular, it is a “Solar Electricity Resource” as defined by AAC R14-2-
3 1802(A)(10). Nor is there any dispute that the Solar facility will displace the use of
4 Conventional Energy Resources by Mohave customers.

5 However, Staff contends the Solar facility “is not sited on customer premises as
6 the Rules require.” Staff is simply mistaken.

7 The Commission defines “customer” as “the person or entity in whose name
8 service is to be rendered, as evidenced by the signature on the application or contract for that
9 service, or by the receipt and/or payment of bills regularly issued in his name regardless of
10 the identity of the actual user of the service.” AAC R14-2-201 (9). “Premises” is defined as
11 “all of the real property and apparatus employed in a single enterprise on an integral parcel of
12 land undivided by public streets, alleys or railways.” AAC R14-2-201 (33). The Solar facility
13 will in fact be located on the “premises” of a Mohave “customer.” As such it meets the
14 express definition of a distributed renewable energy resource.

15 The Solar facility also meets the underlying purpose of the Rule by providing a
16 reliable renewable power resource that does not require the construction of expensive and
17 environmentally sensitive transmission to transmit power into the service area. The Solar
18 facility will provide “Distributed Generation” as defined by AAC R14-2-1801(E) (i.e.,
19 “electric generation sited at a customer premises, providing electric to the customer load on
20 that site or providing wholesale capacity and energy to the local Utility Distribution
21 Company for use by multiple customers in contiguous distribution substation service areas.
22 The generator size and transmission needs shall be such that the plant or associated
23 transmission lines do not require a Certificate of Environmental Compatibility from the
24 Corporation Commission.”).

1 In addition, the Solar facility will provide 5 MW of “solar electric resource”
2 within Mohave’s load pocket that is directly connected to Mohave’s distribution system and
3 available for end use customers without transmission losses and at a lesser cost than the
4 installation of 5 MW of roof-top solar installations. The Solar facility’s output can be better
5 quantified and planned for, allowing for more effective power management of supplies and
6 facilities both in real time operation and for planning purposes. The Solar facility is installed
7 locally allowing the local economy to benefit from the investment.

8 The Solar facility is in keeping with the Cooperative model of maximizing the
9 benefits to the member/customers by keeping costs down and maximizing efficiencies.

10 **B. REQUEST FOR WAIVER**

11 If the Commission somehow concludes that the Solar facility does not currently
12 qualify as a Distributed Renewable Energy Resource under the Rule, then Mohave
13 respectfully requests that the Commission waive the current definition under AAC R14-2-
14 1802(B) and authorization to count the 5 MW Solar facility toward meeting the Distributed
15 Renewable Energy Resources requirement under AAC R14-2-1805. Such a waiver for
16 cooperatives is expressly anticipated by AAC R14-2-1814, which provides: “Upon
17 Commission approval of this plan, its provisions shall substitute for the requirements of R14-
18 2-1804 and R14-2-1805 for the electric power cooperative proposing the plan.”

19 As explained above, the Solar facility will connect a reliable renewable
20 resource directly to Mohave’s distribution system displacing the Conventional Energy
21 Resources that would otherwise be consumed by Mohave’s customers. These benefits will
22 be provided without the need for additional transmission and its associated construction,
23 regulatory and environmental costs and for less overall cost than constructing a similar
24 amount of solar capacity on individual rooftops. Under such circumstances, waiver is
25 appropriate and should be granted by the Commission.

1 **C. IRRIGATION CUSTOMERS SHOULD NOT BE RE-BILLED**

2 In reviewing Mohave's REST Implementation Plan Staff questioned the
3 unusual increase in RES Tariff revenues for the Irrigation customer class reflected in Table 3
4 (from \$262 to \$10,341). In investigating the situation, Mohave found that the surcharge for
5 its 21 irrigation customers had inadvertently been under-billed due to the utilization of the
6 Government Class rate (0.000875/kWh; \$13.00 cap) rather than the Irrigation Class rate
7 (0.0049877/kWh; \$39.00 cap). Staff has recommended that Mohave re-bill under-billed
8 irrigation customers for the maximum six month period permitted by AAC R14-2-210(E)(3)
9 in order to collect a greater proportion of the approved RES Tariff surcharge.

10 Mohave recognizes that AAC R14-2-210(E)(3) allows it to send corrected
11 billings to its irrigation customers and collect the foregoing under-billings for up to a six
12 month period. However, in this instance the under-billing was as the result of Mohave mis-
13 reading and mis-applying its approved RES Tariff. The inadvertent mis-reading of its tariff
14 was also reflected on the internal informational sheet Mohave used to inform its customers of
15 the applicable RES rates. Therefore, any irrigation customers who inquired of the applicable
16 RES rate were told the incorrect lower rate. Finally, the 21 irrigation customers would be
17 asked to pay the under-billed amount² at the same time a slightly higher rate and cap is being
18 implemented under the 2010 RES Tariffs.

19 Under these unique circumstances, Mohave believes the cost and effort to
20 collect a total dollar amount that is insignificant to the overall RES Implementation Plan (not
21 to mention customer confusion and potential customer complaints) does not warrant
22 following Staff's recommendation. Mohave, therefore, requests that it not be ordered to re-

23 _____
24 ² Mohave has not recalculated the actual irrigation billings. However, assuming the approved caps
25 for each customer and deducting the amount of revenue reflected in Table 3 for the Irrigation
customers, an individual irrigation customer could be subject to a re-billing of as high as \$227.76
(i.e., ((((\$39 x 21) x 12) - \$262) / 2) / 21 = \$227.76).

1 bill its irrigation customers for the under-collections that occurred in 2009. Instead, the
2 irrigation customers will be billed correctly under the new RES Tariff rates on a going
3 forward basis.

4 **D. PROPOSED AMENDMENTS TO THE ORDER**

5 Only minor amendments are needed to correct the Recommended Opinion and
6 Order.

7 **1. Recognizing the Solar Facility Satisfies the Rule**

8 If the Commission agrees that the Solar facility meets the Rule's definition of a
9 Distributed Renewable Energy Resource, then the following amendments are appropriate:

10 Page 3, lines 20-23, Finding of Fact 13: Delete "not" and the second sentence.

11 Page 8, lines 4-6, Ordering Paragraph: Delete "but not" and replace with "and
12 shall".

13 **2. Granting the Requested Waiver**

14 If the Commission concludes that the Solar facility does not meet the Rule's
15 definition of a Distributed Renewable Energy Resource but agrees to waive application of the
16 rule, then the following amendments are appropriate:

17 Page 3, line 24: Add new Finding of Fact 14: MEC has demonstrated that the 5
18 MW Solar facility provides the benefits intended to be achieved by a Distributed Renewable
19 Energy Resource and that strict application of the definition found in AAC R14-2-1802(B)
20 should be waived so that the 5 MW Solar facility can be counted toward Mohave's
21 Distributed Renewable Energy Requirement under AAC R14-2-1805. [Renummer remaining
22 Findings of Fact.]

23 Page 7, line 27: Add new Conclusion of Law 4: The Commission, having
24 reviewed the application, Staff's Memorandum dated November 9, 2009 and MEC's Request
25 for Waiver, concludes that it is in the public interest to waive strict application of the

1 definition found in AAC R14-2-1802(B) and to allow the 5 MW Solar facility to be counted
2 toward Mohave's Distributed Renewable Energy Requirement under AAC R14-2-1805.

3 Page 8, line 5, Ordering Paragraph: Place period after "requirement" and delete
4 the remainder of the sentence. Then add new Ordering Paragraph: IT IS FURTHER
5 ORDERED that strict application of the definition found in AAC R14-2-1802(B) is hereby
6 waived and Mohave is hereby authorized to count the 5 MW Solar facility toward Mohave's
7 Distributed Renewable Energy Requirement under AAC R14-2-1805.

8 **3. Eliminating Re-Billing Requirement**

9 If the Commission agrees that Mohave should not be ordered to re-bill its 21
10 irrigation customers for under-billing due to Mohave's mis-reading and mis-application of its
11 RES tariff, then the following amendments are appropriate:

12 Page 6, line 4: Add after the period: However, under the unique circumstances
13 involved (including MEC's acknowledging that it mis-read and mis-applied the REST tariff
14 and the limited additional revenue that would be collected) re-billing the irrigation customers
15 is not warranted.

16 Page 8, lines 7-9: Delete entire Ordering Paragraph.

17 **E. CONCLUSION**

18 Mohave has demonstrated that its 5 MW Solar facility does comply with the
19 definition of a Distributed Renewable Energy Resource set forth in AAC R14-2-1802(B) and
20 as such is eligible to be counted toward satisfaction of the Distributed Renewable Energy
21 Requirement under AAC R14-2-1805.

22 If the Commission, however, finds the 5 MW Solar facility does not meet the
23 technical definition contained in the Rule, Mohave has demonstrated that the Solar facility
24 promotes the goals and objectives of the Rule and that a waiver should be granted to allow
25

1 the 5 MW Solar facility to be counted toward satisfaction of the Distributed Renewable
2 Energy Requirement under AAC R14-2-1805.

3 Finally, Mohave has demonstrated that under the unique circumstances
4 presented, Mohave should not be ordered to re-bill its 21 irrigation customers for six months
5 of the under-billing of the RES Tariff that occurred in 2009.

6 WHEREFORE, Mohave respectfully requests the Commission amend the ROO
7 as suggested above, or as otherwise will adequately address these aspects of the ROO.

8 DATED this 13th day of November 2009.

9 CURTIS, GOODWIN, SULLIVAN,
10 UDALL & SCHWAB, P.L.C.

11
12 By: 

13 Michael A. Curtis
14 William P. Sullivan
15 501 East Thomas Road
16 Phoenix, Arizona 85012-3205
17 Attorneys for Mohave Electric Cooperative
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1200 West Washington
Phoenix, Arizona 85007**

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Commissioner Bob Stump
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ms. Janice M. Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Ernest Johnson
Executive Secretary
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mary Walker
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